

**IN THE  
UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK**

**ECF CASE**

**CASE NO. 12 cv 75  
(DNH/ATB)**

-----X  
ALEC J. MEGIBOW, M.D., M.P.H., F.A.C.R.,  
individually, and on behalf of all similarly  
situated,

Plaintiff,

-against-

CARON. ORG, d/b/a/ CARON NEW YORK, Duane  
Morris, LLP, WolfBlock LLP and, Master Dana  
B. Klinges, Esq.,

Defendants.

-----X

**PLAINTIFF'S MEMORANDUM  
OF LAW IN OPPOSITION TO DEFENDANTS'  
MOTION TO DISMISS "WITH PREJUDICE."**

/s/Anthony M. Bentley  
Anthony M. Bentley  
A. M. Bentley, P.C.  
Plaintiff's Counsel  
116 West 72nd Street  
New York NY 10023-3315  
212 459-4067 Fax 877-2868  
*eMail: ambentley@nyc.rr.com*

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Individually, and on behalf of all similarly  
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-against-

CARON. ORG, d/b/a/ CARON NEW YORK, Duane  
Morris, LLP, WolfBlock LLP and, Master Dana  
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**PLAINTIFF'S MEMORANDUM  
OF LAW IN OPPOSITION TO DEFENDANTS'  
MOTION TO DISMISS "WITH PREJUDICE."**

Plaintiff, by undersigned counsel, respectfully submits that respondents' 12(b) motion should be denied without prejudice to resubmission upon such Rule 12(d) treatment as may be deemed appropriate to this Court.

For well over a century, the law of the land has been that:

"upon the filing of a petition for removal, in due time, with sufficient bond, the case is, in law, removed, and the state court in which it is pending will lose jurisdiction to proceed further, and all subsequent proceedings in that court will be void." *Traction Co. v. Mining Co.*, 196 U.S. 239, 244 (1905)( the emphasis on the word "void" is that of the undersigned).

Defendants, having unilaterally removed the subject case to Judge Crotty's purview in the Southern District, are hardly in a position now to quarrel with the above language.

The Courts of the State of New York are , not surprisingly, in accord with this premise, but are more specific:

“On the removal thereof, the New York Supreme Court lost jurisdiction of that cause of action.” *Fire Ass'n of Phila. v. General Handkerchief Corp.*, 304 N.Y. 382, 385 (1952) (emphasis, again, mine).

That defendants did, or did not prematurely precipitate proceedings in state court while exclusive jurisdiction remained in Judge's Crotty's Court, (where it had been lodged by defendants' removal notice), is obviously a current object of dispute, as it is currently under appeal in state court, thereby satisfying the central remedial requirement of the declaratory judgment act, as it is:

“a case of actual controversy within its jurisdiction”

likewise, venue in the Northern District is proper, as (see Civil Cover Sheet), Dr. Megibow maintains a residence in Columbia County, and has done so for well over two decades.

## **CONCLUSION**

**Defendants' motion to dismiss this declaratory judgment action with prejudice should be denied, and/or such other or further relief deemed appropriate to this Honorable Court should be granted to plaintiff.**

**Dated:  
New York NY  
March 6, 2012**

**Respectfully submitted,**

**/s/Anthony M. Bentley  
Anthony M. Bentley  
A. M. Bentley, P.C.  
Plaintiff's Counsel  
116 West 72nd Street  
New York NY 10023-3315  
212 459-4067 Fax 877-2868  
*eMail: ambentley@nyc.rr.com***